

HFS 117 Project Plan

My name is Larry Hartzke. I am the Administrative Rules Manager for the Department of Health and Family Services and I will be coordinating this effort to revise ch. HFS 117, Fees for Copies of Health Care Provider Records. On behalf of the Department, I want to welcome your interest and participation in this effort. The Department hopes to complete the initial ch. HFS 117 proposed rulemaking order and transmit the order to the Legislative Council Rules Clearinghouse by May 1, 2003.

This document sets forth the roles of persons involved in the effort, the Department's goals for this effort, and the Department's approach for achieving this effort.

1. Roles

My Role: I see my role in this effort as that of principal DHFS staff responsible for:

- designing the project's approach;
- soliciting, gathering, compiling, reviewing, assimilating, proposing and reporting information that is pertinent to the goals of this project, namely, the creation of a ch. HFS 117 that specifies fees based on an approximation of actual record reproduction costs;
- coordinating the activities and interaction of the statutorily-required advisory committee, and facilitating the involvement of other interested parties;
- having project updates and documents posted on the following DHFS admin. rules website:
http://www.dhfs.state.wi.us/News/Rules/HFS_117_Medical_Record_Fee_Limits.htm;
- integrating the knowledge and opinions of DHFS Office of Legal Counsel attorneys, as needed; on this project; and
- drafting a proposed ch. HFS 117 rulemaking order that complies with both the letter and intent of existing law.

Advisory Committee Role: The advisory committee is composed of 14 persons representing either persons who ***maintain*** patient medical records or persons who ***request*** such records. Advisory committee members have the primary role of representing their respective interests in this effort. The advisory committee will convene to discuss issues that merit live discussion. Each committee member is also responsible for providing the Department the best factual information they may have (or know of) on subjects that contribute to the goal of revising ch. HFS 117.

Virtual Participants Role: Virtual participants are persons who have registered their interest in this effort with me and have provided me their email address for my inclusion on a list. Such persons may simply passively observe the effort's progress via periodic postings on the Department's HFS 117 website created for this effort. Alternatively, such persons may submit pertinent ***factual*** documents or ***commentary*** to me about one or more aspects of or subjects in the course of this effort. Everyone sharing information with me in this regard should assume that the Department might publicize any submitted information, including possibly sharing it with the committee to achieve the purposes of revising HFS 117.

2. Approach

The Department wants to draft a rule that complies with applicable and relevant law and specifies fees that are based on an approximation of actual costs.

- Meetings

I have reserved space for the advisory committee to meet in room 638 in the state office building at 1 W. Wilson St. in Madison from 1 to 4 PM on the following dates ***in the event*** the committee needs to convene:

March 4th

March 18th

April 2nd

April 16th

April 25th

April 29th

May 6th

I do not anticipate that the committee will need to meet on most of these dates because I hope that many of the inputs to revising the HFS 117 fee limits should be known or readily accessible from advisory committee members and virtual participants. Moreover, these inputs should be principally quantitative and readily transmitted electronically or, if necessary, via paper.

- Conceptual Approach

The Department intends to develop a rule that complies and is consistent with what it believes to be applicable state and federal law, and is based on an approximation of actual medical record reproduction costs. To this end, I have identified what I consider to be the following major factors and considerations.

1. The recent federal Health Insurance Portability and Accountability Act (HIPAA) regulations and federal commentary related thereto, including the issues of:

- Who, and the circumstances under which, a person will be considered someone's "personal representative" for the purposes of requesting a copy of that person's medical record; and
- Whether the costs associated with record retrieval should be included in fee limits for subject persons or their personal representatives.

2. The Department hopes to develop realistic, reasonable estimates of ***actual*** patient record reproduction costs based on an approximation of pertinent costs associated with accomplishing such reproduction. It seems to me that the best way to arrive at an approximation of aggregate reproduction cost is to attempt to identify the component tasks and estimated costs associated with medical record reproduction. Issues bearing on doing so include the following:

- What are the possible types of medical record mediums? (paper, electronic, microfiche, traditional x-ray, other?)
- For the purposes of ch. HFS 117, does/should the medical care provider setting (i.e., hospital, clinic, etc.) or subject patient group (e.g., children, elderly, etc.) matter with respect to the time and effort needed to reproduce records?
- What are the steps involved in reproducing medical records and how are those steps different for different record mediums and record maintainer settings?

To this end, I have already received and am reviewing paper copies of the following articles:

- "An Analysis of the Release of Information Function and the Cost of Copying Hospital Medical Records in the State of Ohio," Ohio Health Information Management Association, January 1994.

- "Jackson County Circuit Court Medical Records Rule - Update," Kansas City Area Hospital Association, May 9, 1994.
- "Copying Records - The Saga Continues," by Rose Dunn, For The Record, April 7, 1997.
- "Copying Costs: Help is as Close as Your 1040," by Rose Dunn, For The Record, April 6, 1998.

3. While my preference is to approach the specification of fee limits based on the component costs of medical record reproduction as described under #2 above, I am also interested in existing fee limits previously established by other states, agencies and even private entities. Such policies may be in statute, or rules/regulations of governmental entities, or simply administrative policies of private organizations. On the assumption that such existing standards and policies **may** have been based, at least, in consideration of record reproduction costs, it may be useful to compare those standards and policies with what results from the construction a cost-based record reproduction model.

- Sequence of Activities

Within that broad paradigm, the Department initially intends take the following general sequential approach to this project:

1. Solicit and collect information from committee members **and virtual participants** described in the "Conceptual Approach" (including project dimensions) deemed by the Department and advisory committee to be germane to the revision of ch. HFS 117.
2. Compile and analyze collected information. Summarize and share information with the committee **and virtual participants**, as appropriate. Possibly, convene the committee to discuss specific issues.
3. Incrementally construct the framework of a ch. HFS 117 that reflects information deemed pertinent to the effort and clearly indicates what is and is not permitted and under what circumstances. Possible framework/paradigm may include distinct fee limits depending on record medium being requested, the person making the request and both fixed and variable/incremental fee limits.
4. Draft language for the ch. HFS 117 rulemaking order and share those drafts with committee members **and virtual participants**.

3. Initial Project Needs

As the Department's approach alludes to, I want to gather as much information that is germane to this effort as possible. To that end, I am interested in the following:

- Information you may be able to provide me, ideally, **by March 7th** on the following subjects:
 - How HIPAA bears on the revision of ch. HFS 117;
 - Whether the categories of paper, electronic, microfiche and traditional x-ray comprise the universe of medical record mediums **for the purposes of this project**, and if not, what other mediums should be addressed;
 - Whether the steps involved in the reproduction of medical records within a particular medical record maintainer setting or for a particular patient group are sufficiently different to suggest a significantly different reproduction cost;

- Both the sequence of steps and time associated with each of step typically required for medical record reproduction, by medical record medium, setting or patient group, as appropriate; and
- Existing medical record fee limit policies.

To the extent possible and practicable, I'd appreciate any information you submit to be in electronic form to facilitate the subsequent use and dissemination of it. However, in the event that paper is the only option, my mailing address is P.O. Box 7850, Madison, WI 53707-7850.

If you believe that other types of information would be germane to this effort, beyond those identified above, please feel free to suggest them to me. I intend to review all information submitted and subsequently begin proposing frameworks and more detailed approaches for the specification of fee limits.

If you believe that the Department should consider other aspects or approaches, please let me know.

Finally, I want to tell you that I sincerely believe that I/we can readily meet our statutory obligation to ascertain or, at least, generally approximate, fee limits based on actual costs of record reproduction, and we can do that within the structure and process that is specified in this memo. And I look forward to doing so over the next two months.